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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re J. G., a Person Coming Under the
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
& HUMAN SERVICES,

Plaintiff and Respondent,

v.

ROBERT G.,

Defendant and Appellant.

C069638

(Super. Ct. No.
JD230914)

Father, Robert G., appeals the juvenile court's summary denial of his Welfare & Institutions Code section 388¹ petition. He contends the court erred in denying him the opportunity to have a full hearing on his petition. We find father did not

¹ Undesignated statutory references are to the Welfare and Institutions Code.

make a prima facie case that modification and further reunification services were in the minor's best interest. Accordingly, we affirm the judgment.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The minor lived with father intermittently for five of his first seven months of life. At eight months old, the minor was detained and placed in protective custody. The minor had been diagnosed with poly cystic renal disease, a condition requiring close medical monitoring and father had left the minor without medical coverage and in the custody of mother, who he knew had substance abuse problems. Four months later, the court found mother and father were unable or unwilling to provide the minor with adequate food, clothing, shelter and medical treatment. At that time, the minor was also placed in a new foster home, which later became his prospective adoptive home. A few months later, the minor's newborn half sister was placed in the same foster home.

Reunification services were not ordered for mother, based on her past history of failing to reunify with the minor's half siblings and the termination of her parental rights over them. Father was granted reunification services and visitation. Over the next six months, father did not maintain a stable and safe residence, had difficulty maintaining employment and had his driver's license revoked. He enrolled in three separate substance abuse treatment programs, but did not complete them. He completed the Strategies for Change program and a parenting program and enrolled in counseling. Father was scheduled to

visit the minor twice a week. Visits were appropriate, but father missed numerous visits. The minor usually "went easily" to father, but would sometimes reach back for his foster mother. After visits, the minor separated from father and returned to his foster mother easily.

The Sacramento County Department of Health and Human Services (DHHS) recommended reunification services be terminated because father had only recently begun counseling, did not have a stable residence or income and there was a risk father would return the minor to mother. Following a contested hearing, the juvenile court found father was not credible regarding his relationship with mother, did not regularly visit the minor and failed to make substantive progress in his case plan. Accordingly, the juvenile court followed DHHS' recommendation, terminated reunification services and set the matter for a selection and implementation hearing.

The minor continued to do well in the prospective adoptive home. Visitation with father continued to be appropriate. DHHS deemed the minor adoptable due to his age, physical health and development. Adoption was recommended as the permanent plan.

Prior to the permanency hearing, father filed a petition for modification (§ 388) seeking either placement of the minor or additional reunification services. He alleged since the time services had been terminated he had completed group counseling and outpatient substance abuse treatment, continued to attend after care and counseling, obtained a stable residence and ended his relationship with mother. As to the minor's best interests,

father claimed his "progress in his alcohol and drug rehabilitation, counseling, and parenting education, have significantly increased his ability to care for and reunify with the child []. His demonstrated commitment to remain out of chaotic relationships, such as his previous relationship with [mother], will lend towards emotional stability and a healthy parenting environment for the child. The father's desire to continue on with counseling well beyond merely receiving a certificate indicates his understanding to the commitment needed to provide the best possible environment for [the minor]."

A hearing was held to determine whether father's petition made a prima facie showing of changed circumstances and the best interests of the child. Father made an offer of proof that he would testify about how he had benefitted from group counseling, learned from substance abuse treatment and taken responsibility for his actions. In addition, father and a family friend would testify about the nature of father's relationship with, and love for, the minor. During argument, father reiterated his claimed changed circumstances. As for the minor's best interests, he argued, "it's always in a child's best interest if we have a parent who has not given up. [¶] [Father] has continued to fight for his son and fight for himself really in order to be a better man and a better father, and I believe even though [the minor] might be placed in a home that is committed in providing permanency through the form of adoption it's always in a child's best interest, if a parent has made significant changes in their lives, for that parent to further be provided an opportunity to

give testimony as to why it is in [the minor]'s best interest to grant the 388 motion."

The juvenile court found there was "no proof that the father's motion either to place [the minor] with him or to reopen services [was] in the child's best interest. There's not only not prima facie evidence, there's no evidence. No evidence." The court also found there was no evidence of changed circumstances. Based on these findings, the court summarily denied father's modification petition. Following a contested hearing, the court found the minor adoptable and ordered parental rights terminated. The court noted father had not consistently and regularly contacted the child, with over 75 percent of the child's life being outside the father's care.²

DISCUSSION

Father contends he made a prima facie showing of changed circumstances and that the minor's best interests would be served by either placing the minor with him or ordering further reunification services; and, therefore the trial court abused its discretion in summarily denying his section 388 petition to modify. We disagree.

Under section 388, subdivision (a), a parent "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change" a previous court order.

² The court specifically found the section 366.26 report filed by DHHS was inaccurate when it stated father had continued to have regular visitation with the minor.

"If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held" (§ 388, subd. (d).) Whether to provide a hearing on a petition alleging changed circumstances is within the juvenile court's discretion, but the petition must be liberally construed in favor of its sufficiency. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431.) To be entitled to a hearing on a section 388 petition a parent must make a prima facie showing *both* that there is "(1) new evidence or changed circumstances exist *and* (2) the proposed change would promote the best interests of the child." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806, italics added; *In re Aljamie D.*, *supra*, 84 Cal.App.4th at p. 432.) The "prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.) While the petition must be liberally construed, more than general conclusory allegations are required to make a prima facie showing. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) If the petition fails to state facts showing it would be in the best interests of the child to modify the order, the petition may be denied without a hearing. (Cal. Rules of Court, rule 5.570(d); *In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 808.)

When as here, the petition for modification is brought after termination of reunification services, the best interests of the child are the paramount consideration. (*In re Stephanie*

M. (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child, the juvenile court looks to the needs of the child for permanence and stability. (*Ibid.*)

Father alleged no facts, and proffered no evidence, supporting his assertion that a change in order was in the minor's best interests. There was no evidence of a particular bond between the minor and father. The minor lived with father for no more than five months, was an infant when he was detained and visits with father were sporadic. The minor showed no distress at separating from father after visits and looked to his foster mother for reassurance during visits. Father's assertions and evidentiary proffers regarding the minor's best interests focused on father's progress in services and his feelings for the minor. Father made no proffer regarding the minor, his need for permanence and stability or his best interests. Father's only claim as to the minor's best interests is that where the parent has made significant changes in their life, "it's always in a child's best interest" for the parent to be provided further opportunity to reunify. It is not. Rather, under the circumstances of this case, where father's reunification services were terminated, continued care in the prospective adoptive home is presumptively in the minor's best interests. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) Because father failed to make a prima facie showing that granting his petition would serve the minor's best interests, the court did not abuse its discretion by denying the petition without a full hearing.

Thus, we need not address father's argument he made a prima facie showing of changed circumstances. Under the circumstances presented here, the juvenile court did not abuse its discretion by denying father's section 388 petition without a hearing.

DISPOSITION

The juvenile court's order is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

MAURO, J.